

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

<b>RACHEL AINSWORTH,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIV-11-418-SPS</b>
<b>vs.</b>	)	
	)	
<b>UNITED STATES OF AMERICA ex rel.</b>	)	
<b>THE DEPARTMENT OF HEALTH AND</b>	)	
<b>HUMAN SERVICES, INDIAN HEALTH</b>	)	
<b>SERVICES, PUBLIC HEALTH SERVICES,</b>	)	
<b>AND CHOCTAW NATION HEALTH CARE</b>	)	
<b>CENTER, AND CHOCTAW NATION</b>	)	
<b>HEALTH SERVICES,</b>	)	
<b>Defendants.</b>	)	

**ANSWER OF THE UNITED STATES OF AMERICA  
TO PLAINTIFF'S COMPLAINT**

**COMES NOW** the defendant, United States of America, by and through Mark F. Green, United States Attorney for the Eastern District of Oklahoma and Susan Stidham Brandon, Assistant United States Attorney and for its answer to the complaint filed herein by Plaintiff would allege as follows:

1. Defendant lacks sufficient knowledge or information either to admit or deny the allegations contained in Paragraph 1 of Plaintiff's complaint, and therefore denies the same.
2. Defendant denies that The Choctaw Nation Health Care Center is a proper defendant in this action and, therefore, denies the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. The allegations contained in Paragraph 3 of Plaintiff's Complaint is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 3 of Plaintiff's Complaint.

4. The allegations of Paragraph 4 of Plaintiff's Complaint is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 4 of Plaintiff's Complaint.

5. Defendant denies the allegations contained in Paragraph 5 of Plaintiff's Complaint except to admit that the Department of Health and Human Services denied the Administrative Tort Claim of Rachel Ainsworth on June 15, 2011.

6. Defendant denies the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Complaint.

The unnumbered "Wherefore" paragraphs that contain allegations regarding Plaintiff's injuries and Plaintiff's prayer for damages and other remedies requires no response, but insofar as a response is required, Defendant denies that these Paragraphs state a claim on which relief can be granted.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff lacks subject matter jurisdiction.

2. Plaintiff's claims are time-barred by the statute of limitations. 28 U.S.C. §2401(b).

3. The Complaint fails to state a claim upon which relief can be granted.

4. The injuries or damages, or both, alleged in the Complaint were not proximately caused by a negligent act or omission of any employee of the United States acting within the scope and course of employment.

5. Plaintiff is limited to the amount of damages set forth in the administrative tort claim. 28 U.S.C. §2675(b).

6. Attorney's fees taken out of the judgment or settlement are governed by statute. 28 U.S.C. §2678.

7. Defendant is not liable for interest prior to judgment. 28 U.S.C. §2674.

8. Plaintiff's claim for damages is limited to damages recoverable under 28 U.S.C. §2674.

9. Plaintiff has no right to a jury trial. 28 U.S.C. §2402.

10. Defendants The Department of Health and Human Services, Indian Health Services, Choctaw Nation Health Care Center and Choctaw Nation Health Services are immune from suit; and this Court lacks subject matter jurisdiction over the claims against these defendants. 28 U.S.C. §2679(d), and 28 U.S.C. §1441. The only appropriate defendant is the United States of America.

11. Defendant assert that it has, or may have, additional affirmative defenses that are not know to Defendant at this time, but which may be ascertained through discovery. Defendant specifically preserves these and other affirmative defenses as they are ascertained through discovery.

**WHEREFORE**, having fully answered the allegations of Plaintiffs' Complaint, the Defendant prays for the judgment of this Court in favor of the Defendant and that Plaintiff recover nothing; that Plaintiff's prayer for relief be denied; that the Defendant henceforth be discharged of all liability to the Plaintiff and for dismissal of Plaintiff's Complaint; and for such other and further relief as the Court may deem just and proper.

MARK F. GREEN  
United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2012, I electronically filed the foregoing with the Clerk of Court using the ECF System. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jeff Belote, Attorney for Plaintiff, email: [Jeff@jeffbelotelaw.com](mailto:Jeff@jeffbelotelaw.com).

S/ SUSAN STIDHAM BRANDON  
SUSAN STIDHAM BRANDON  
Assistant U.S. Attorney